

Decision 97-07-065 July 16, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's own motion for purposes of compiling the Commission's rules of procedure in accordance with Public Utilities Section 322 and considering changes in the Commission's Rules of Practice and Procedure.

Rulemaking 84-12-028
(Filed December 20, 1984)

**OPINION REVISING DRAFT OF FINAL RULES
AND INVITING COMMENT ON REVISIONS**

1. Introduction

In today's decision, we make revisions and corrections to our first draft of final rules implementing Senate Bill (SB) 960 (Leonard, ch. 96-0856). The revised draft will be sent to the Office of Administrative Law (OAL) for publication in the California Regulatory Notice Register (Register). We invite written comments, which must be filed and served in this proceeding no later than 45 days after publication.¹ We will review these comments and adopt the final rules, after further revisions, as appropriate.

The revised draft appears in the Appendix to today's decision. Changes, deletions, and additions to the first draft are indicated in the margin.²

¹ The date of publication depends, in part, on factors beyond our control. The Chief Administrative Law Judge shall try to transmit the revised draft to OAL in a time for publication in the August 1, 1997 Register, and shall also ensure that the publication date and exact due date for comments are posted at the Commission's Internet site (www.cpuc.ca.gov), under the heading "CPUC Reform (SB 960)."

² There are no changes to the amendment previously proposed to Rule 13.2 (our expedited complaint procedure); the proposed amendments to the rules on reassignment of an Administrative Law Judge are slightly revised to refer to the revised draft of the SB 960 rules. The Appendix contains all of these rules for the convenience of reviewers.

2. Background

With Resolution ALJ-170 (January 13, 1997), we began implementation of SB 960 by conducting an experiment under rules that we are applying to a limited but reasonably representative sample of proceedings. We have categorized about 30 proceedings under the experiment, and as these proceedings progress, we continue to gain experience with the experimental rules and procedures.

Our first draft of final SB 960 rules appears in Resolution ALJ-171 (March 18, 1997). We held a public workshop on this draft on May 8, and four parties submitted written comments by the May 19 due date.³ We are now proposing revisions to the first draft. These revisions draw on our experience to date with the experimental rules and on feedback from the parties.

3. Summary of Revisions

3.1. Applicability

The first draft proposes to apply SB 960 requirements only to proceedings started after January 1, 1998, and to any proceedings included in the experiment that are still open as of that date. We now propose to revise Rules 4 and 6 from the first draft so that SB 960 requirements would also apply to a proceeding filed before January 1, 1998, in which, as of that date, there has been neither a prehearing conference nor a determination to hold a hearing, and the Commission, assigned Commissioner, or assigned Administrative Law Judge determines after January 1, 1998, that a hearing should be held.

This revision responds to comments by several parties that the applicability rule proposed in the first draft might be overly restrictive.⁴ The determination to hold a hearing is a key procedural step for purposes of SB 960 (as well as for case management

³ Unless otherwise noted, parties' comments cited below are those filed on May 19.

⁴ See, e.g., Comments of Pacific Bell at page 2; Comments of Southern California Edison Company at pages 14-15.

under pre-SB 960 procedures); if that step has not been taken in a given proceeding as of January 1, 1998, then applying SB 960 requirements to that proceeding would not involve repeating or undoing previously completed steps. We agree that in these circumstances, SB 960 requirements should apply, regardless of when the proceeding was filed. We now propose revisions to Rules 4 and 6 to implement this slightly broader applicability.

3.2. Designation of Presiding Officer

Rule 6 in the first draft sets out procedures to be followed when proceedings start. A key procedural step is the assigned Commissioner's ruling, generally at or after a prehearing conference. The ruling is to include various determinations, and (in ratesetting proceedings) the designation of the "principal hearing officer." However, Rule 6 currently does not mention the designation of the "presiding officer" (in adjudicatory proceedings). We now propose revisions to Rule 6 to clarify that the assigned Commissioner's ruling will contain the latter designation.⁵ We also add a definition of "presiding officer" (new Rule 5(k)).

3.3. Procedure at Start of Complaints

Rule 6 in the first draft would apply the same procedures at the start of complaints and of applications. We now have concluded that the SB 960 directives are better met by specifying different procedures for the start of complaints.⁶

⁵ We also clarify Rule 6 to indicate that the assigned Commissioner has discretion, where appropriate, to make this determination, among others, on the record at the prehearing conference.

⁶ The discussion in the text relates to our regular complaint procedure. We retain our proposal, announced in the first draft, to exclude from coverage under the SB 960 rules those cases handled under our expedited complaint procedure. The latter proposal appears noncontroversial, as no party has opposed it.

We base our conclusion on the fact that complaints, for the most part, will be adjudicatory proceedings, and thus under SB 960 must be resolved within 12 months of their initiation.⁷ Because the statutory mandate regarding resolution of adjudicatory proceedings is more stringent than that for ratesetting or quasi-legislative proceedings, we want to categorize complaints, and resolve any appeal of the categorization, as soon as possible.

Therefore, we propose that complaints be categorized in the “instructions to answer” by the Chief Administrative Law Judge, in consultation with the Commission’s President. The instructions to answer, which our Docket Office will serve on the defendant (with a copy to the complainant) shortly after the complaint is filed, will be subject to appeal to the Commission. The instructions to answer would also designate the Administrative Law Judge assigned to the proceeding. Rule 6 is revised accordingly, and various cross-references in other rules are changed to reflect this revision.

3.4. Procedure at Start of OSCs, OIIs, and OIRs

As with complaints and applications, Rule 6 in the first draft would apply the same procedures at the start of all Commission-initiated proceedings (orders to show cause (OSCs), instituting investigation (OIIs), or instituting rulemaking (OIRs)). We have concluded that OSCs and OIIs, which commonly will be adjudicatory proceedings, should be treated differently from OIRs.

Our conclusion follows our logic with respect to complaints, namely, that we should categorize as soon as possible any proceeding that is likely to be subject to a 12-month deadline under SB 960. Thus, we will make the appealable determination of category in the OSC or OII itself. OIRs will contain a preliminary categorization that

⁷ A few complaints will come within the ratesetting category because they challenge the reasonableness of rates or charges. In contrast, most applications will be categorized as ratesetting or quasi-legislative proceedings, for which the Commission has greater latitude under SB 960 to establish a reasonable time period (not to exceed 18 months) for resolving the matter.

the assigned Commissioner may affirm or recommend changing in light of responses to the OIR, and the assigned Commissioner's ruling is appealable to the Commission.

3.5 Proceedings Without Hearings

We propose a new rule (Rule 6.6) to clarify how the SB 960 rules affect proceedings without hearings. Briefly, we expect to categorize and do scoping memos for all formal proceedings within the 12-month and 18-month deadlines in SB 960. However, ex parte communications are permitted in proceedings without hearings. In all other respects, the SB 960 rules will not apply to a proceeding that does not go to hearing.

3.6 Changes to Preliminary Determinations

SB 960 contemplates that the Commission will determine the category and need for hearing regarding any formal proceeding. In applications and OIRs, our SB 960 rules provide for preliminary determinations of these matters by the Commission; the assigned Commissioner then affirms these preliminary determinations or recommends a change to either or both. We now propose a new rule (Rule 6.5) to clarify that where the assigned Commissioner rules that either of these preliminary determinations should be changed, the ruling will be placed on the Commission's Agenda for approval of the change(s).

3.7 Comments on Proposed Decision

Rules 77.1-77.6 of our existing Rules of Practice and Procedure contain a process whereby parties may file comments and reply comments on proposed decisions published under Public Utilities Code Section 311. The latter statute is amended by SB 960, and we have concluded that we should clarify how that amendment affects the above comment process.

For purposes of drafting and issuing decisions, SB 960 distinguishes between ratesetting and quasi-legislative proceedings, on the one hand, and adjudicatory proceedings, on the other hand. For the former proceedings, the statute requires issuance of a "proposed decision" (ratesetting) or a "proposed rule or order" (quasi-legislative). For adjudicatory proceedings, however, no proposed disposition is

required; in such proceedings, the presiding officer's decision takes effect unless the Commission is specifically requested to review it. Accordingly, our comment process is well-suited to ratesetting and quasi-legislative proceedings, and we have revised proposed Rule 8.1 to allow comments on the proposed decisions in those proceedings.

We do not allow comment on presiding officer's decisions (adjudicatory proceedings) during the 30-day appeal period after issuance of such decisions. However, under revised Rule 8.2, we give the presiding officer discretion to solicit comment on all or a portion of the decision at any time before the 30-day appeal period has begun to run.

3.8 Commission Presence

Under Rule 8(f)(4) of the first draft, a Commissioner could attend a hearing via electronic link from a remote location. We want the rule to be sufficiently general to enable Commissioners to take full advantage of current and emerging communication technology. However, we intend that a Commissioner who is attending a hearing from a remote location be in two-way communication with the hearing, so as to enable active participation by the Commissioner. Our proposed revision clarifies this intent.

3.9 Other Revisions

We have made a variety of minor changes to the first draft. These changes generally fall into the following categories: changes to make the rules consistent with the revisions summarized above; additional cross-references and definitions to make the rules easier to use and understand; changes to terminology to improve internal consistency; and correction of typographical errors.

Finding of Fact

The revised draft of final rules implementing SB 960, which draft is set forth in the Appendix to today's decision, draws on workshop discussion and written comments regarding the first draft, and on experience under Resolution ALJ-170 (establishing experimental SB 960 rules).

Conclusion of Law

The draft of final rules in the Appendix should be submitted as soon as possible to the Office of Administrative Law for publication in the California Regulatory Notice Register.

O R D E R

IT IS ORDERED that:

1. The Chief Administrative Law Judge shall submit all required forms to the Office of Administrative Law preparatory to publishing in the California Regulatory Notice Register the revised draft of final rules implementing SB 960. For purposes of such publication, the Chief Administrative Law Judge is authorized to propose nonsubstantive changes to the draft and to the existing Title 20 rules, wherever such nonsubstantive changes will improve the clarity, organization, or consistency of the Commission's Rules of Practice and Procedure.

2. No later than 45 days after publication of the revised draft in the California Regulatory Notice Register, parties may file and serve their comments on the revised draft. The comments shall focus on the changes, additions, and deletions to the first draft.

This order is effective today.

Dated July 16, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners

I will file a partial dissent.

/s/ HENRY M. DUQUE
Commissioner

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(See Formal Files for attachments.)